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June 19, 2019

VIA ECF

Hon. Cheryl L. Pollak, Magistrate Judge
U.S. Eastern District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Toussie v. Allstate Insurance Company
Case No.: 15-CV-05235 (ARR)(CLP)

Dear Judge Pollak,

On behalf of Mrs. Toussie, I request that Your Honor exercise the Court's ancillary jurisdiction to hear and resolve fee disputes and lien claims and schedule a hearing to fix the amount of the attorney's lien claimed by prior counsel, Schlam, Stone & Dolan, LLP (the "Schlam Firm"). *See, Garcia v. Teitler*, 443 F.3d 202, 208 (2d Cir. 2006) ("we have long approved of the exercise of ancillary jurisdiction by district courts to resolve fee disputes arising in civil cases"); *Louima v. City of N.Y.*, 2004 WL 2359943, *55-56 (E.D.N.Y. 2004) (observing "federal courts . . . independent authority to regulate attorney admission and withdrawal, and ancillary to that, the authority to determine attorney's fee disputes and regulate attorney's fee liens").

In connection with that hearing, I also ask the Court to direct the Schlam Firm to provide me, at least three business days in advance, copies of all the bills rendered to Mr. Toussie in this matter plus its retainer letter with Mr. Toussie, if any. Production of these invoices and the retainer agreement is certainly not burdensome. The hearing will take no more than an afternoon, after which the Court can determine the amount of the lien. That amount will be promptly paid and I can then secure the case files that the Schlam Firm has previously refused to release. I also ask that the hearing be conducted under seal so as not to disclose client confidential information to Allstate.

HAMBURGER, MAXSON, YAFFE & MCNALLY, LLP
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We need the Schlam Firm case files because there has been extensive discovery in this matter that is not reflected in the documents that have been electronically filed. I understand that thousands of pages have been exchanged. We have no access to those productions and do not even know all the demands that were made by the parties for documents and other disclosures. Nor are we privy to prior communications between the parties' attorneys concerning the disputed theft claim and this action, including pre-action communications (which I was told were provided to the Schlam Firm by counsel that preceded the Schlam Firm). I also do not know what investigative material or information provided by Mr. and Mrs. Toussie resides in the Schlam Firm's files.

All in all, the documents and materials in the Schlam File are likely to be invaluable to me in understanding and analyzing the factual and legal issues presented by this case and in representing Mrs. Toussie more effectively, in ways that I am not even in a position to know.

I have been told by Allstate's attorneys not to ask them for any documents (*see* my attached e-mail exchange with Mr. Zahner and Mr. Meyerhoff dated June 10, 2019) and, in any event, Allstate's attorneys would not have any of the client confidential materials provided to the Schlam Firm.

Finally, I request that the case be stayed for a reasonable period to allow the hearing to take place, the lien to be paid, and the files to be delivered and reviewed.

Respectfully,

A handwritten signature in black ink, appearing to read 'Richard Hamburger', with a stylized flourish at the end.

Richard Hamburger

/lc
Attachment

c: Via ECF:
Gary Meyerhoff, Esq.
Brendan E. Zahner, Esq.
Frederick P. Stern, Esq.

Richard Hamburger

From: Meyerhoff, Gary <gary.meyerhoff@dentons.com>
Sent: Monday, June 10, 2019 1:37 PM
To: Richard Hamburger; Zahner, Brendan E.
Subject: RE: Toussie / Allstate

Richard:

You say "I don't mean to burden you," and then you do. You are asking us to spend our client's time helping you re-assemble files for your client.

Magistrate Judge Pollak already told prior counsel that they should review the docket carefully and that the case "does not start anew each time there is a change in attorney." You apparently have not done that, or even consulted with your co-counsel, Mr. Stern, who is *still* Ms. Toussie's counsel of record.

The relevant excerpts of the transcript you are asking for are filed as an exhibit to our Amended Answer as Ex. J. If you want the whole transcript, you can ask the court reporter for it. Her contact info is on the first page of Ex. J. In any event, asking us to provide it circumvents the reporter's right to receive payment for transcripts.

As for the exhibits filed under seal, they were served on Mr. Stern by email the day the amended answer was filed.

Your client has chosen her own course in hiring and firing multiple counsel, not paying them, and getting hit with multiple retention liens. She and her new counsel can do what is necessary to make sure they have the files needed to continue to litigate an action she initiated. This is not Allstate's responsibility.

Please do not put us in the position of having to respond to any more of these requests.

Thanks,

Gary



Gary Meyerhoff

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From: Richard Hamburger <rhamburger@hmylaw.com>
Sent: Monday, June 10, 2019 10:25 AM
To: Meyerhoff, Gary <gary.meyerhoff@dentons.com>; Zahner, Brendan E. <brendan.zahner@dentons.com>
Subject: Toussie / Allstate

Gary and Brendan,

I don't mean to burden you, but it would greatly assist our coming up to speed if you could provide us, as a courtesy, with the following:

1. Full transcript of 5/19/16 euo/settlement conference.
2. The exhibits to your amended answer that were filed under seal – Exhibts, E, F, G, H, I, J, X and Y.

Thank you.

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